

HIGHLY CONFIDENTIAL - M. KELLY
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11
LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.
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* * *HIGHLY CONFIDENTIAL* * *

DEPOSITION OF MARTIN KELLY

New York, New York

August 18, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24042

1 HIGHLY CONFIDENTIAL - M. KELLY

2 August 19, 2009

3 9:30 a.m.

4
5 HIGHLY CONFIDENTIAL deposition
6 of MARTIN KELLY, held at Jones
7 Day, LLP, 222 East 41st Street,
8 New York, New York, before Kathy S.
9 Klepfer, a Registered Professional
10 Reporter, Registered Merit Reporter,
11 Certified Realtime Reporter, Certified
12 Livenote Reporter, and Notary Public
13 of the State of New York.
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1 HIGHLY CONFIDENTIAL - M. KELLY

2 Q. By whom are you currently employed?

3 A. By Barclays Capital.

4 Q. How long have you been employed there?

5 A. Since late September of '08.

6 Q. And what's your title at Barclays
7 Capital?

8 A. I'm a Managing Director and I'm the
9 Chief Financial Officer in the Americas.

10 Q. And is that the position you have held
11 since you joined Barclays in September of '08?

12 A. No, it's not. No, my --

13 Q. Go ahead.

14 A. My title has remained the same. My
15 position changed in March, and upon going into
16 Barclays from Lehman, I had three different
17 positions. The first was the Financial
18 Controller for Barclays Capital on an interim
19 basis, and that was a London-based position.
20 Second position was the head of Finance for
21 Structured Capital Markets.

22 Q. Also in London?

23 A. Also in London. The third position
24 was head of Americas Financial Decision Support.

25 Q. Financial Decision Support?

1 HIGHLY CONFIDENTIAL - M. KELLY

2 A. Support, yeah.

3 Q. Was that in London or in the Americas?

4 A. That was an Americas-based role.

5 Q. Are you based in New York?

6 A. I am. I have remained living in New
7 York. I commuted to London for that period of
8 time between September and March.

9 Q. Okay.

10 A. I should also say that, in addition to
11 being CFO of the Americas now, I retained the
12 second of those three positions, so I remain
13 head of Finance for Structured Capital Markets
14 today.

15 Q. And prior to your employment by
16 Barclays Capital, by whom were you employed?

17 A. By Lehman Brothers.

18 Q. For approximately what period of time
19 were you employed by Lehman Brothers?

20 A. I was employed from approximately
21 August 2000 through approximately May 2005, and
22 then from January 2006 until September 2008.

23 Q. And what did you do during the
24 interval between your two stints at Lehman?

25 A. I was not employed.

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2 A. Paolo was as involved -- well, Paolo
3 was very involved in the transaction.

4 Q. In the e-mail, Mr. Kelly, you say in
5 the first sentence, "Well it took all night and
6 lots of back and forth, but the deal is done and
7 ready for the board." You see that sentence?

8 A. Yes.

9 Q. And had you been involved all night?
10 I know you said you went home for -- after dawn,
11 so I'm trying to figure out were you there, you
12 know, were you involved all night?

13 A. I was there until this point in time.

14 Q. I didn't hear that.

15 A. Sorry. I was there until this point
16 in time.

17 Q. And this e-mail is sent at
18 approximately 5:10 A.M. on the morning of the
19 16th, and you had been there continually all
20 night until you sent the e-mail?

21 A. I'd been in the office continually,
22 yes.

23 Q. And you say there that there had been
24 lots of back and forth. What did you mean when
25 you wrote to Mr. Lowitt and Mr. Tonucci that

1 HIGHLY CONFIDENTIAL - M. KELLY

2 there was lots of back and forth?

3 A. I recall a series of discussions
4 negotiating the values of the assets to be sold
5 and -- including the real estate assets.

6 Q. In addition to the real estate assets,
7 what, generally speaking, what type of assets?

8 A. Generally speaking, the inventory of
9 securities that was being sold to Barclays.

10 Q. And you go on in your e-mail to write,
11 "Final price did not change meaningfully -
12 approx. a 5B," 5 billion, "all in economic loss
13 versus our marks and 3.6B of resi assets left
14 behind." Do you see that sentence?

15 A. Yes.

16 Q. Okay. When you refer to the final
17 price not changing meaningfully, can you explain
18 to me what you meant when you wrote that to
19 Mr. Kelly and Mr. Lowitt?

20 A. To Mr. Tonucci and Mr. Lowitt.

21 Q. I beg your pardon, to Mr. Tonucci and
22 Mr. Lowitt.

23 A. I don't recall.

24 Q. Do you recall having knowledge of some
25 back and forth about what the final price would

1 HIGHLY CONFIDENTIAL - M. KELLY

2 be?

3 A. There were conversations throughout
4 the night on prices of different components of
5 the transaction.

6 Q. When you say "different components of
7 the transaction," are you talking about the real
8 estate and, generally speaking, the inventory of
9 securities?

10 A. Correct.

11 Q. When you wrote, "Approx. a 5 billion
12 all in economic loss versus our marks," what did
13 you mean by that?

14 A. I recall that the 5 billion represents
15 the difference between the negotiated price and
16 the values of those assets on Lehman's books.

17 Q. So was the agreement, as you
18 understood it, to give Barclays a \$5 billion
19 discount off the values of those assets as shown
20 on Lehman's books?

21 MR. HUME: Objection, vague.

22 MR. BERNSTEIN: Objection.

23 A. No.

24 Q. Please describe for me what you meant
25 when you said there would be a 5 billion

1 HIGHLY CONFIDENTIAL - M. KELLY

2 economic loss versus the marks?

3 MR. BERNSTEIN: Objection. Asked and
4 answered.

5 A. The 5 billion represents or
6 represented the difference between the
7 negotiated sales price and the value of the
8 assets on Lehman's books prior to the sale.

9 Q. Forgive me for being a little slow,
10 but the Lehman -- the assets are carried on
11 Lehman's books at a total of X, correct? And
12 the agreement was to sell them to Barclays for 5
13 billion less than X, is that what you mean?

14 A. Well, the 5 billion represents a sum
15 of Xs and a sum of Ys negotiated
16 portfolio-by-portfolio.

17 Q. On a sort of sum-total level? The sum
18 total is the securities are carried at X and the
19 deal is to sell them for 5 billion less than the
20 total of X, correct?

21 A. Well, the 5 billion was a consequence
22 of a series of discussions conducted at a
23 portfolio level.

24 Q. Describe those discussions as best you
25 can. Tell me everything you remember about

1 HIGHLY CONFIDENTIAL - M. KELLY

2 those discussions conducted at portfolio level.

3 A. I did not participate in those
4 discussions. Those discussions were occurring
5 throughout the course of the night. My
6 recollection is that a Lehman representative and
7 a Barclays representative being experts in those
8 particular asset classes were discussing the
9 contents of the portfolio and negotiating an
10 appropriate value for the assets to be sold.

11 Q. Who were the Lehman representatives or
12 representatives and the Barclays representative
13 or representatives you just referred to?

14 A. There were a series of discussions
15 occurring simultaneously, so I don't -- I don't
16 know all of the representatives. I do recall
17 Eric Felder and Stephen King representing Lehman
18 and Barclays respectively. I'm not aware of who
19 was negotiating other asset classes.

20 Q. There were people negotiating other
21 asset classes, you just don't remember who they
22 were?

23 A. That's my understanding, yes.

24 Q. And what asset class or classes, to
25 your knowledge, were Mr. Felder and Mr. King

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2 A. It wasn't a single room. It was a
3 series of conversations between different
4 representatives of Lehman and Barclays.

5 Q. And these are the conversations about
6 the different asset classes that you were
7 telling me about before the break?

8 A. Yes.

9 Q. And I take it there were also
10 conversations about other terms of the deal
11 apart from the \$5 billion overall loss versus
12 Lehman's marks, right? Comp, for example,
13 compensation?

14 A. Could you repeat that question,
15 please?

16 Q. Well, you talked before the break
17 about adjusting the marks on various asset
18 classes and different people being involved in
19 those conversations.

20 Putting that aside for a moment, there
21 were other topics that were the subject of back
22 and forth, right, like compensation terms in the
23 agreement, yes?

24 A. Well, I think the conversations that I
25 referred to are not centered on adjusting the

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2 marks, they were centered on what was an
3 appropriate sale price for the assets being
4 sold.

5 Q. When you say it was an appropriate
6 sale price for the assets being sold, is
7 there -- what was your sense of whether it was
8 appropriate to sell the assets for 5 billion
9 less than Lehman showed them on their books?

10 MR. BERNSTEIN: Objection. No
11 foundation.

12 A. I wasn't part of those negotiations.

13 Q. Did you have a view? Did you think
14 Barclays got a pretty good deal?

15 MR. BERNSTEIN: Objection. Compound.

16 A. I don't have a view.

17 Q. Did you have a view at the time?

18 A. No, I didn't.

19 Q. Did you have any reason at the time to
20 believe that the marks at which Lehman carried
21 those assets were inaccurate?

22 A. No.

23 Q. Did you have any understanding as to
24 why those marks would be marked down by \$5
25 billion to achieve the sale price to Barclays?

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2 MR. BERNSTEIN: Objection. No

3 foundation.

4 A. As I previously mentioned, the \$5
5 billion was an aggregation across a series of
6 portfolios.

7 Q. Uh-huh. Did you have an
8 understanding, sir, that the agreement, the
9 pricing of the agreement was that Barclays would
10 pay Lehman 5 billion less than Lehman had
11 thought the assets were worth?

12 A. My understanding was that the
13 negotiated sales price across all those asset
14 portfolios resulted in a \$5 billion,
15 approximately \$5 billion loss to Lehman relative
16 to its marks at that time.

17 Q. And Lehman's marks at that time were,
18 as far as you knew, maintained in a way that
19 they were Lehman's best view of the value of
20 those assets across those classes, correct?

21 MR. BERNSTEIN: Objection. No
22 foundation.

23 A. The values were determined in
24 accordance with valuation policies and under
25 U.S. GAAP.

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2 Q. So, to go back to whether you had a
3 view at 5:10 A.M. when you sent this e-mail to
4 Mr. Lowitt and Mr. Tonucci, did you have a view
5 about whether Barclays was getting a good deal
6 paying 5 billion less than Lehman was carrying
7 these assets for on its books?

8 A. No.

9 Q. Did you ever express a view to
10 anybody?

11 A. No.

12 Q. Did anybody express any view to you?

13 A. No.

14 Q. As you sit here now, do you think
15 Barclays got a pretty good deal?

16 MR. BERNSTEIN: Objection. That's not
17 a factual question. That's calling for his
18 opinion, and I don't think he's being
19 compensated as an expert.

20 MR. GAFFEY: I'll take the answer and
21 worry about admissibility later.

22 Q. You can answer the question.

23 A. I don't have a view.

24 Q. Now, in response to your e-mail,
25 Mr. Lowitt responds, "You are a hero. Well

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2 done. Ian." Do you see that?

3 A. Yes.

4 Q. Did you have a sense that Ian thought
5 you were in some part responsible for the terms
6 of the transaction that you described in your
7 e-mail?

8 A. No.

9 Q. Did you wonder why Ian was describing
10 you as a "hero"?

11 A. I don't recall thinking about it.

12 Q. Do you recall asking him about it?

13 A. No.

14 Q. And when Ian says, "Well done," did
15 you have a sense that your boss was telling you
16 you had done a good job in coming up with these
17 terms?

18 A. I don't have a view on that.

19 Q. Did you have a sense at the time when
20 you got a "well done" from your boss about the
21 terms of a contract you described, that he
22 thought you were responsible for those terms?

23 MR. BERNSTEIN: Objection asked and
24 answered, but --

25 A. No.

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2 with regard to whole classes of securities as
3 opposed to the particular securities within that
4 class?

5 MR. BERNSTEIN: Objection. Vague and
6 ambiguous.

7 A. My recollection is that sales prices
8 were negotiated for individual classes of
9 assets.

10 Q. By class, not by the individual
11 components of that class, yes?

12 A. By class, yes.

13 Q. And if you can go back to the schedule
14 that's attached to Exhibit 196 on the asset side
15 of the schedule, government and agencies,
16 commercial paper, mortgages, do you see where I
17 am?

18 A. Yes.

19 Q. Are those the asset classes that were
20 being discussed?

21 A. They were. I'm not sure there was a
22 separate discussion for each line item, but they
23 were the asset classes in aggregate that were
24 being discussed.

25 Q. Okay. You're not sure there was a

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2 separate negotiation with respect to each of the
3 six classes of securities that are described
4 here? I'm excluding cash.

5 A. I'm not sure if it was six separate
6 meetings or some lesser number.

7 Q. And did the asset values ascribed to
8 these classes of securities reflect the
9 aggregate \$5 billion all in economic loss versus
10 Lehman's marks?

11 MR. BERNSTEIN: Objection. Vague and
12 ambiguous.

13 A. Can you repeat the question, please?
14 (Record read.)

15 A. Can you repeat the question again,
16 please?

17 (Record read.)

18 A. The \$5 billion economic loss was a
19 consequence of the negotiated sales price for
20 each of these classes of assets.

21 Q. Could you answer the question I asked
22 you? Is it reflected in this financial
23 schedule? Is that \$5 billion loss shown in this
24 schedule?

25 A. What's the question, please?

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2 Q. Is the \$5 billion loss shown on the
3 schedule you're holding in your hands?

4 MR. HUME: Objection. Vague.

5 A. I'm not sure I understand the question
6 when you say "reflected."

7 Q. As far as you know, sir, for these
8 asset classes, exclusive of cash, were they
9 shown on Lehman books at an amount higher than
10 \$62 billion at or about the time this schedule
11 was prepared?

12 A. My understanding is yes, they were, in
13 aggregate.

14 Q. Were they \$5 billion higher; is that
15 your understanding?

16 A. Approximately \$5 billion higher.

17 MR. GAFFEY: It would be a good time
18 to take a lunch break. I'm starting to move
19 on to another topic.

20 (Luncheon Recess; Time Noted: 12:27

21 P.M.)
22
23
24
25

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2 AFTERNOON SESSION

3 (Time Noted: 1:38 P.M.)

4 MARTIN KELLY, resumed and

5 testified further as follows:

6 EXAMINATION BY (Cont'd.)

7 MR. GAFFEY:

8 Q. Mr. Kelly, I have a couple more
9 questions about Exhibit 136A. That's your
10 e-mail that we talked about a bit this morning.

11 This morning you mentioned that you
12 were -- you saw different sets of people dealing
13 with different asset classes. My question to
14 you is who added it up to \$5 billion for you to
15 put in that e-mail?

16 A. I don't recall.

17 Q. Did you?

18 A. I don't recall myself doing it.

19 Q. Do you have any recollection of who it
20 was who conveyed to you the fact that it was \$5
21 billion in total?

22 A. No.

23 Q. Do you have any recollection of who
24 conveyed to you that it was an extra 1 billion
25 of comp beyond Lehman's accrual?

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2 A. The conversation with comp was with
3 Bart McDade and that conversation referred to
4 compensation being agreed at \$2 billion.

5 Q. And in reflecting on the fact that it
6 was Bart McDade who told you that it was a \$2
7 billion agreement with respect to comp, does
8 that refresh your recollection as to whether
9 perhaps it was Mr. McDade who told you the \$5
10 billion total for the economic loss?

11 A. No.

12 Q. Do you have a recollection as to
13 whether it was one or more than one person who
14 conveyed to you the information that you
15 collected in this e-mail that you sent out to
16 Mr. Lowitt and Mr. Tonucci?

17 A. No, I don't.

18 Q. I asked you a bit this morning about a
19 conversation with Mr. Shapiro and this is a
20 loose end or two I need to follow up on, but did
21 you talk to Mr. Shapiro about what the deal was
22 before you sent this e-mail out?

23 A. Well, there were many aspects of the
24 transaction, and as I mentioned, I participated
25 in a meeting where certain aspects of the

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2 included Mark Shapiro and Mark Shafir and
3 Michael Klein whereby the value of the real
4 estate assets was debated, as was the commission
5 for -- oh, as was a reasonable commission that
6 would relate to such a sale.

7 Q. The commission relating to the real
8 estate aspect of the sale, yes?

9 A. Correct.

10 Q. Okay. My questions go to the other
11 assets, to the securities, the various classes
12 of securities we've been discussing.

13 Did you see a similar debate take
14 place about the overall economic loss Lehman
15 would bear against its marks?

16 A. No.

17 Q. As you sit here today, do you have any
18 knowledge at all, sir, about the negotiating
19 process that went into what turned out to be an
20 aggregate \$5 billion all in economic loss versus
21 Lehman's marks?

22 A. Nothing beyond what I've already
23 described today.

24 Q. Was there a point where you did know
25 more? I'm trying to figure out how much of it

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2 may be lapsed memory and how much you knew at
3 the time.

4 Was there a time when you did know
5 more about a negotiating process concerning the
6 overall economic loss against Lehman's marks?

7 A. I -- I don't believe so.

8 Q. Okay. If you wanted an answer to who
9 would know about a haggling or a negotiating
10 process concerning the overall loss to Lehman's
11 marks, who would you ask?

12 A. Sorry, can you repeat the question,
13 please?

14 (Record read.)

15 A. I would start with Bart McDade as the
16 person who I understood to be leading the
17 negotiations for Lehman.

18 Q. And who else would you ask? You would
19 start with Mr. McDade. Who else would you ask?

20 A. I would ask the two individuals, the
21 two bankers to the transaction, Mark Shapiro and
22 Mark Shafir.

23 Q. Can we go back to the balance sheet
24 that was attached to the financial schedule
25 that's attached to Exhibit 196, and directing

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2 your attention to the liability side of that
3 financial schedule, and in particular,
4 Mr. Kelly, down to the lower right-hand corner
5 where it refers to cure payment and comp, do you
6 see that?

7 A. Yes.

8 Q. What was the source of the 2.25 number
9 for cure payment?

10 A. I don't recall.

11 Q. Did you ever know? Was there a time
12 when you did know what the source of the 2.25
13 for cure payment was?

14 A. I don't know.

15 Q. Do you have any idea as you sit here
16 today what the -- how the assessment cure
17 payment came to 2.25?

18 A. No.

19 Q. Is it your understanding that the
20 entries on the liability side of this schedule
21 for cure payment for comp represent liabilities
22 that Barclays was going to assume in the
23 transaction?

24 MR. HUME: Objection. Vague.

25 A. Can you repeat the question, please?

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2 (Record read.)

3 A. My recollection is that these amounts
4 were initial estimates of liabilities that
5 Barclays was to assume.

6 Q. Well, the comp number of 2 billion was
7 an agreed number, correct?

8 A. Yes, that was my understanding.

9 Q. And it was your understanding that the
10 2 billion comp number that was agreed was a
11 billion dollars over the accrual that Lehman
12 carried on its books for comp, correct?

13 A. It was approximately a billion dollars
14 over the cash component of the accrual.

15 Q. And do you know how anybody went about
16 estimating the amount for cure payment? How did
17 that number come to be on this schedule?

18 A. No.

19 Q. Do you know if the 2.25 billion that's
20 estimated for cure payment on there bore any
21 relation to the actual potential liability for
22 trade payables that Lehman had at the time?

23 A. Sorry. Can you repeat the question,
24 please?

25 (Record read.)

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2 A. At what point in time?

3 Q. At the time that this was prepared.

4 It's dated September 16, 2008, 11:18 A.M.

5 A. No.

6 Q. No, you don't know or, no, it didn't?

7 Sorry, the question might have got
8 lost in there.

9 A. Can you ask the question again,
10 please?

11 Q. I'll put another question.

12 Do you know if the 2.25 billion number
13 for cure payment reflected on the liability side
14 of this schedule dated September 16, 2008 bore
15 any relation to the actual potential liability
16 for trade payables that Lehman had on its books
17 at the time?

18 MR. BERNSTEIN: Objection. Asked and
19 answered.

20 A. I'm sorry, I need the question again.

21 (Record read.)

22 A. No.

23 Q. You don't know or it didn't bear a
24 relation to the amount accrued?

25 A. I think the question was "do you

1 HIGHLY CONFIDENTIAL - M. KELLY

2 know."

3 Q. You're telling me you don't know, is
4 that right?

5 A. Correct.

6 Q. Okay. What, if any, connection was
7 there, sir, between the figures on this
8 financial schedule and the pricing of the
9 transaction as it was agreed by the 16th of
10 September?

11 A. This schedule was intended to reflect
12 an initial estimate of the assets to be acquired
13 and the liabilities to be assumed, and my
14 understanding is that the agreed price was
15 negotiated based on an agreement as to the price
16 of each of these individual items.

17 Q. And the agreed price was based on the
18 estimates, on the estimates in this schedule?

19 A. I don't know.

20 Q. Were you asked to put this schedule
21 together?

22 A. I don't recall.

23 Q. Were you involved in putting this
24 schedule together?

25 A. Yes.

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2 Q. Do you recall generally?

3 A. Sometime during that week.

4 Q. Beginning or the end of the week?

5 A. I don't recall.

6 Q. No recollection at all?

7 A. No.

8 Q. Could it have been -- it wasn't right
9 after you wrote your e-mail at 5:10, right?

10 A. I don't recall.

11 Q. Was there a target quantity of such
12 assets that needed to be identified?

13 A. Not that I was aware of.

14 Q. Were you aware at the time whether
15 there was a target people were trying to reach
16 of such assets?

17 A. Not that I was aware of.

18 Q. Do you have a sense of what the -- my
19 term -- the shortfall was between the amount of
20 assets that needed to be made up?

21 A. No.

22 Q. Did you have a sense of that at the
23 time?

24 A. I don't recall.

25 Q. Did the -- again, I'm back at the

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2 financial schedule -- did the assumption of
3 liabilities for comp and cure change at any
4 point over that week?

5 MR. HUME: Objection. Vague.

6 A. I don't recall that the accrual for
7 comp changed throughout the course of that week.

8 Q. It stayed at 2 billion?

9 A. That's my recollection.

10 Q. What about the accrual for cure, did
11 that change during the week, over the course of
12 the week?

13 A. My recollection is that the estimate
14 for the cure payment did change.

15 Q. How did it change?

16 A. Can you rephrase the question?

17 Q. Did it go up? Did it go down?

18 A. The estimate went down.

19 Q. By how much did it go down?

20 A. My recollection is that the estimate
21 reduced to approximately a billion dollars.

22 Q. To a billion dollars or by a billion
23 dollars?

24 A. To approximately \$1 billion.

25 Q. And who calculated -- who made the

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2 necessary calculations to reduce that estimate
3 from 2 and a quarter to \$1 billion?

4 A. I don't recall.

5 Q. Why was it reduced from 2 and a
6 quarter to \$1 billion?

7 A. It was reduced after a review of the
8 schedule that Ian, Ian Lowitt, and I undertook
9 at some point during that week whereby we
10 observed that the estimated liability appeared
11 to be high relative to the expense run rate of
12 the firm.

13 Q. And was it you and Mr. Lowitt who made
14 that determination that it was high relative to
15 the expense run rate?

16 A. My recollection is that it was Ian and
17 I that made that observation.

18 Q. And at what point in the week did you
19 and Mr. Lowitt make that observation? Early in
20 the week? Late in the week?

21 A. I can't recall.

22 Q. Was it before Friday of the week?

23 A. I believe it was before Friday, but
24 I'm not certain.

25 Q. And when you made that determination,

1 HIGHLY CONFIDENTIAL - M. KELLY

2 did you or Mr. Lowitt communicate it to anyone?

3 A. Yes. Ian and I spoke with Bart.

4 Q. Tell me the circumstances under which
5 you spoke to Bart and everything that you can
6 remember about the conversation.

7 MR. BERNSTEIN: Objection. Compound.

8 A. Can you ask one question at a time,
9 please?

10 Q. When did you speak to Bart?

11 A. I don't recall the date, the day
12 specifically, but it was shortly after observing
13 that the accrual appeared high.

14 Q. Where were you when you spoke to Bart?

15 A. I recall that we met in Bart's office.

16 Q. Bart was in the office, too?

17 A. We met with Bart.

18 Q. In his office?

19 A. Correct.

20 Q. And Ian Lowitt was in the office with
21 you and Bart, correct?

22 A. That's my recollection.

23 Q. Was anyone else present in the office
24 with you and Bart and Ian Lowitt?

25 A. I don't believe so.

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2 Q. Tell me what you said, what Mr. Lowitt
3 said, and what Mr. McDade said in that meeting.

4 A. My recollection is that I explained
5 the observation that we had, meaning that the
6 liability estimate appeared high relative to the
7 run rate. I don't recall what Ian said in that
8 meeting. And I recall Bart's reaction to that
9 as being: We just left a billion dollars on the
10 table.

11 Q. Are those the words that Mr. McDade
12 used?

13 A. Words to that effect. I can't -- I
14 can't say that they were specifically the words.

15 Q. As best you can -- we'll work from
16 there, but as best you can, tell me the words
17 that he used, as best you remember.

18 A. They are the words as best I can.

19 Q. And what did you say in response to
20 him saying that?

21 A. I don't recall if there was a
22 succeeding conversation.

23 Q. When you had this conversation with
24 Bart, did you show him any analysis or documents
25 of any kind reflecting your view that the

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2 liability for cure was high -- withdrawn.

3 Did you show him any documents to
4 explain your point at that meeting?

5 A. I don't think so.

6 Q. Had you prepared any documents that
7 led to you coming to that conclusion?

8 A. I don't recall.

9 Q. Did you prepare any documents that
10 reflected that conclusion?

11 A. I don't recall.

12 Q. Did you ever cause a financial
13 schedule similar to the one in front of you to
14 be prepared that reflected that change?

15 A. I believe it was reflected on a -- on
16 a later version of this schedule.

17 Q. Do you know what the schedule -- if
18 that schedule or one like it was used at the
19 closing of the transaction on September 22?

20 MR. BERNSTEIN: Objection. Vague and
21 ambiguous.

22 A. I wasn't at the closing, so no. No, I
23 don't know, to answer the question.

24 Q. Did you ever ask anyone if an amended
25 schedule was used when the transaction was

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2 closed?

3 A. I don't recall.

4 Q. I'm showing you, sir, what was marked
5 at a previous deposition as Exhibit 19, and if
6 you compare that to the schedule that's attached
7 to Exhibit 196, sir, you'll see that it's the
8 same except for an annotation at the top
9 right-hand corner. Take a moment to satisfy
10 yourself that that's so, would you, please?

11 (Document review.)

12 A. I agree with that.

13 Q. Okay, you agree with that. Have you
14 ever seen this version that was previously
15 marked as Exhibit 19, the one with the
16 handwritten annotation in the upper right-hand
17 corner?

18 A. At what point in time?

19 Q. Ever before today.

20 A. I need a minute with my lawyers,
21 please.

22 Q. I prefer you answer the question,
23 unless there's a privilege issue.

24 Can you answer the question?

25 MR. BERNSTEIN: Maybe if we can modify

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2 A. Yeah, that appears that there's no
3 difference between the two.

4 Q. Hence, a flat result in the "Loss and
5 Gain" column, yes?

6 A. Yes, as a derivation of that.

7 Q. All right. Now, can you tell me what
8 the 5.25 at the bottom of the "Loss/Gain" column
9 is meant to show?

10 A. I believe it was intended to show the
11 loss on sale -- sorry, the estimated loss on
12 sale to Lehman of the transaction.

13 Q. Now, down at the bottom left-hand
14 corner of these notes, sir, there are a series
15 of debits shown, "Cash," "Comp," "Payables," and
16 "Shorts," do you see that?

17 A. Yes.

18 Q. And a credit for a \$65 billion long
19 position, you see that?

20 A. Yes.

21 Q. And then the last entry there is "DR,"
22 debit less on sale, 5.75?

23 A. Yes.

24 Q. You with me?

25 A. Yes.

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2 Q. What is that meant to indicate?

3 A. Well, I believe it's intended to
4 represent the loss on sale to Lehman of the
5 transaction. However, it doesn't correspond
6 with the 5.25 figure above.

7 Q. You're kind of at my next question.
8 Can you account the difference -- for the
9 difference between the loss on sale to Lehman of
10 2.25 billion in the "Loss/Gain" column and the
11 loss on sale to Lehman at the bottom of 5.75?

12 A. No, I can't.

13 Q. The only thing I can suggest, sir, is
14 there's a debit without a figure in there for
15 cash. Would that somehow account for the
16 difference? You see where I am in DR cash item?

17 MR. BERNSTEIN: Objection. No
18 foundation.

19 A. I don't know.

20 Q. Okay. Now, having gone through this
21 page, does this refresh your recollection at all
22 about the setting in which you were making these
23 notes at the time and the circumstances under
24 which you were making them?

25 A. No, it doesn't.

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2 Q. Is it fair to say that the -- now I'm
3 back in the "Loss/Gain" column, the 5.25 loss to
4 Lehman. Did that calculate -- is it fair to say
5 that's primarily a function of the difference
6 between the book value of the inventory and the
7 value negotiated -- and the negotiated value in
8 the contract for the securities?

9 MR. HUME: Objection. Vague and
10 ambiguous.

11 A. It may. It may. It likely accounts
12 for the difference based on these estimates at
13 this point in time.

14 Q. Now, would you turn two pages later in
15 these notes. I'm at Bates page 115171.

16 I'm going to need a little more help
17 with your handwriting here. Is that your
18 handwriting on the page?

19 A. Yes.

20 Q. Can you tell me what that says in the
21 top center? Looks to me like it says "what
22 locked up"? You see where I am?

23 A. Yes.

24 Q. Can you read that top -- that entry at
25 the top center of the page, please?

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2 A. It says, "What locked up? How much
3 to" -- I can't make out the next word, and then
4 it looks like it says "rep. to calculation."

5 Q. I guess we could both struggle that
6 word that you can't read, but let me just
7 suggest, does that say "reserve" or "recover"?

8 A. I don't think so.

9 Q. Okay.

10 A. I think the second to last word is an
11 "S."

12 Q. Okay. Let's not both guess at it and
13 we'll both go find our elementary school
14 teachers and they can talk about our
15 handwriting.

16 A. That's fair.

17 Q. There's some names on here, including
18 Gary Romain. See that?

19 A. Yes.

20 Q. Having looked at this portion, does
21 this refresh your recollection as to the
22 circumstances under which you took these notes,
23 made these notes?

24 A. Well, it would appear to be after the
25 Monday night because there's a reference to

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2 Alvarez on the top right.

3 Q. Okay. And why does that tell you
4 that's after the Monday night?

5 A. I don't believe we had any
6 conversations about or with Alvarez until after
7 the Monday night.

8 Q. Okay. And had you had conversations
9 with Gary Romain before the Monday night?

10 A. Yes.

11 Q. Now, below that is an entry that
12 says -- just tell me if I'm reading this
13 correctly -- "Ian, 15c3 lockup calc"; is that
14 right?

15 A. Yes.

16 Q. Getting better at your handwriting.
17 What is that a reference to?

18 A. I believe that's a reference to funds
19 segregated under the 15c3 requirement.

20 Q. Now, I want to go back generally,
21 without regard to the notes, to this topic we
22 talked about before about looking for available
23 assets to transfer over to Barclays. 15c3 is
24 what sort of triggers that topic.

25 Did you assist in the search for